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FILE 582-440 Germany

German Patent Application
P 15 17 318.9-41
Your Case: 582-440 Foreign
Philip Morris Inc.
Our Case: P 35 174

Dear Sirs:

We received the Patent Office's summons for a hearing scheduled for December 7, 1971 to be seen from the enclosures.

We have attended the hearing in accordance with your instructions by letter of November 10, 1970.

Regrettably the Examiner was unwilling to acknowledge the inventive height (unobviousness) in the present case. He rather took the view that the use of a nicotine-ion exchanger in the filter was foreseeable just as well as that the filter releases the nicotine again. In this connection he further cited an Austrian patent disclosing that flavorants can be absorbed by ion exchangers and that these flavorants can be released again from the ion exchanger in the gas stream. Since it was sheerly impossible to induce the Examiner to acknowledge the inventive height, there is no longer a prospect for the grant of a patent. We will have to expect the rejection of the application unless we withdraw it.

In accordance with your letter of November 10, 1970 we have noted down that no appeal is to be lodged against a rejection. Nor can we recommend an appeal under the present circumstances because as regards the demands imposed on the inventive height the Patent Court is usually more rigorous than the Examiner.

DUE DATE 3/10/72
DOCKETED 1/5/72
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In the course of the hearing the Examiner pointed out that many a Philip Morris' application he might publish with less trouble if the technical advance over the established prior art were demonstrated by comparative tests. He has instructions to be adamant on such comparative tests and he mentioned that other companies having patent applications on file within the tobacco field did always submit such comparative tests. He requested us explicitly to ask your client that in the future such comparative tests be submitted whenever the Examiner demands them, all the more since in the Examiner's view only a relatively small technical effort is required therefor.

Enclosed please find

(1) 2 copies of the minutes on the oral hearing;

(2) translation thereof in duplicate.

The Patent Office has set a term for reply until

March 10, 1972.

We further beg to enclose

(3) our debit note in duplicate.

Yours very truly,

1 cc
Encs

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